



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/044

Order No.: 088 (NBI/2015)

Date: 18 March 2015

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KUBWIMANA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM

Stephen Margetts, ALS/OHRM

Introduction

1. The Applicant is a Senior Electoral/Political Affairs Officer at the United Nations Assistance Mission in Somalia (“UNSOM”). He serves at the P-5 level on a fixed-term appointment.
2. On 12 March 2015, he filed an Application for Suspension of Action, pending management evaluation, seeking the suspension of the United Nations Support Office for AMISOM’s (UNSOA) decision to deduct USD6,000 from his salary and transfer the same into the account of his former spouse’s lawyer on the basis of a court Order issued by the Children’s Court in Nairobi, Kenya.
3. The Respondent filed a Reply to the Application on 13 March 2015 in which it was asserted that the Application was not receivable.

Facts

4. On 12 August 2013, the Children’s Court in Nairobi issued a judgment in respect of Children’s Case No. 1205 of 2012 in which the Applicant and his former spouse were parties. The Children’s Court, inter alia, ordered the Applicant to pay his former spouse USD1,000 as his contribution towards his children’s upkeep with effect from the date of the ruling and subsequently on every tenth day of the month.
5. The Applicant had, prior to the said judgment, initiated divorce proceedings in Rwanda. The Court in Rwanda issued its judgment in the divorce on 12 June 2014. The Applicant testified at the suspension of action hearing that the Rwandan Court’s Judgment made orders for child support, which superseded those of the Kenyan Court.
6. On 23 January 2015, the Applicant received a memorandum from UNSOA’s former Chief Civilian Personnel Officer (CCPO), Mr. Edow Idun, informing him that the Organization had received a letter and a Court Order originating from the Children’s Court at Nairobi requiring the Organization to garnish his salary in order to settle a Court decree of KES486,316 and USD6,000.

7. The Applicant was further informed that in accordance with section 2.2. of ST/SGB/1999/4 (Family and child support obligations of staff members), he was required to comply with the Order immediately and to submit proof of compliance to the Organization within 30 calendar days from the date of receipt of the memorandum and that should he fail to submit the proof of compliance, the Organization would commence deductions from his salary in the amount ordered.

8. On 28 February 2015, the Applicant responded to the former CCPO informing him that the Court Order was fraudulent for the following reasons:

- a. He did not have a court case in Kenya.
- b. He contributed to his children's upkeep in Rwanda where they presently live with his former spouse since her recall from her diplomatic posting in Kenya where she had served as Ambassador from September 2012 to March 2014.
- c. His contribution to child support was on the basis of a divorce judgment rendered in Rwanda on 12 June 2014 and not the Kenyan case which had dealt with issues of access to the children as well as the respective contributions to their upkeep during the time of his former spouse's diplomatic posting in Kenya while he was working in New York.
- d. The said Order was invalid and fraudulent since it emanated from a court that has no jurisdiction over his children, his former spouse or himself as none of them are citizens of Kenya or are residents of Kenya. The Order was sent to UNSOA 11 months after his children left Kenya.
- e. There were material inconsistencies and contradictions in the Order which refers to "payment to court" while his former spouse's lawyer specifically requested in her email to the former CCPO that the amount be wired into her firm's bank account.

f. The name of the Principal Magistrate that allegedly issued the said Order is not indicated, which departs from the practice.

9. On 28 February 2015, UNSOA's Legal Officer, Ms. Zam Zam Kasujja, wrote an email to the Applicant conveying to him as follows:

a. Child and family obligations of staff members are considered private legal obligations and in the "best scenario, the organization does not want to know what is going on".

b. However, once a court order is issued against a staff member, the Organization limits itself to enforcement of the court order if the staff member does not sort out the matter as was suggested by the former CCPO.

c. The Administration does not have the authority or the resources to verify his private claims vis-à-vis the lawyers of his wife.

d. The Organization will treat the court order as valid unless he presents a letter from his wife or from the court indicating that the submitted court Order has been stayed or is fraudulent as he alleges.

e. The Organization will forward the court Order to New York for deductions of his salary if he did not present the required information within 30 days.

10. On 10 March 2015, the Applicant requested management evaluation of the decision "to request salary deduction based on court order to the United Nations to that effect".

11. The Tribunal held a hearing on 16 March 2015.

Respondent's submissions on receivability

12. The Respondent submits that the Application is not receivable for the following reasons:

- a. The Applicant does not challenge an administrative decision within the meaning of art. 2.1(a) of the Dispute Tribunal's Statute.
- b. A staff member may not challenge the intermediate or preparatory steps of an administrative decision; only the "final decision," which carries direct legal consequences for the staff member's legal rights and obligations is receivable before the Tribunal. Preparatory decisions can only be disputed in light of the final decision.
- c. Conditional decisions, notifying a staff member that a decision will be taken in the future in the event that certain events transpire are not administrative decisions.
- d. The contested decision is not a final administrative decision. It does not have direct legal consequences on the Applicant's terms of appointment. Instead, the contested decision is a notification under section 2.2(a) of ST/SGB/1999/4 to the Applicant that should he fail to take action to set aside the court order and should the order be final, the Administration will be obliged to take action under section 2.2(b) of ST/SGB/1999/4 to commence deductions from his salary. To date, no decision has been taken under section 2.2(b) to make deductions from the Applicant's salary.
- e. Accordingly, the contested decision is not an administrative decision under art. 2.1(a) of the Tribunal's Statute and the Application is not receivable.

Considerations

13. The Respondent submits that the Applicant is not challenging an administrative decision within the meaning of art. 2.1(a) of the Tribunal's Statute and as such, the Application is not receivable.
14. The Respondent further submits that a staff member may not challenge the intermediate or preparatory steps of an administrative decision; only the "final

decision,” which carries direct legal consequences for the staff member’s legal rights and obligations is receivable before the Tribunal.

15. Article 2.1(a) of the Tribunal’s Statute provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General of the United Nations:

To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance [...].

16. The current Application purports to challenge the decision of the former CCPO of UNSOA and UNSOA’s Legal Officer requesting the United Nations Headquarters to make deductions to his salary based on the disputed Order of the Children’s Court of Kenya.

17. Section 1 of ST/SGB/1999/4 provides that one of the fundamental duties of all staff members is that they must comply with local laws and honour their private legal obligations including the obligation to honour orders of competent courts. Such orders include orders against a staff member to make payments for the support of his or her spouse or former spouse and/or dependent children.

18. The following are the procedures to be followed when staff members fail to comply with family support court orders:

Procedures when staff members fail to comply with family support court orders

2.1 Under staff rule 103.18 (b) (iii), the Secretary-General may authorize deductions from staff members’ salaries, wages and other emoluments for indebtedness to third parties. Family support court orders create indebtedness to third parties, such as the staff member’s spouse, former spouse and/or dependent children.

2.2 To ensure effective relief when staff members fail to comply with family support court orders, the Organization will voluntarily take the following actions when it receives a family support court order against a staff member which is final and which is not being honoured by the staff member:

(a) The staff member will be requested to comply with the order immediately and to submit proof of compliance to the Organization within 30 calendar days from the date of receipt of the request from the Organization;

(b) If the staff member does not submit the proof of compliance within 30 days, the Organization will commence deductions from the staff member's United Nations emoluments in respect of the amounts ordered;

(c) The amounts deducted will then be paid to the spouse, former spouse or the dependent child(ren), in accordance with the order.

.....

Section 3 Implementation

All requests for assistance in securing compliance with family support court orders and requests for information relating to family or child support are to be addressed to the Assistant Secretary-General for Human Resources Management for action. The Office of Legal Affairs will provide advice if the Organization is presented with conflicting family support court orders or if other legal issues arise.

19. The Tribunal has carefully reviewed the Parties' submissions and the applicable staff rules and finds that a final decision has yet to be made in respect to garnishing the Applicant's salary. That final decision will be made by the Assistant Secretary-General for Human Resources Management who will be guided by the Office of Legal Affairs when making it in cases such as the present where the "Organization is presented with conflicting family support court orders or if other legal issues arise".

20. There are still several steps to be complied with on the part of the Organization under ST/SGB/1999/4 before it can commence the making of deductions from the Applicant's emoluments in respect of the amounts ordered in the disputed Court Order.

21. The Tribunal, however, is minded to make the following recommendations to the parties. The Applicant who is not legally represented is advised to:

a. Provide all the necessary information to the Administration in regard to his child support obligations.

b. The Applicant should submit the divorce judgment showing the order for custody and maintenance of his children issued by the Rwandan Court to the Organization.

c. He should submit an affidavit stating all the relevant and material facts to the Organization.

d. He should show that there is no judgment upon which the disputed garnishee Order from the Kenyan Children's Court is based.

e. He should submit proof to the Organization that he does not owe any arrears of payment for the period from 12 August 2013 when the Kenyan Children's Court issued its Ruling to 12 June 2014 when the Rwandan Court issued the divorce judgment.

22. The Tribunal makes the following recommendations with respect to the Respondent:

a. The Respondent must ensure that a proper examination of the competence and validity of the Court Order is thoroughly done.

b. In the instant case, the Respondent should have sought proof on what judgment the disputed Order was based.

c. The Respondent should also have sought proof as to what the relevant period for the arrears claimed was.

d. Also to be questioned was whether the disputed Order had been superseded by a later one issued by the Rwandan Courts.

e. Finally, the Respondent should have questioned the Kenyan Children's Court officials as to why the disputed Order required the alleged arrears to be paid to the Kenyan Children's Court yet the Applicant's former spouse's lawyers had requested the alleged arrears to be paid into the law firm's bank account.

Conclusion

23. In view of the foregoing, the Tribunal concludes that the current Application is premature, not receivable and is therefore refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 18th day of March 2015

Entered in the Register on this 18th day of March 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi